

APPEAL NO. 041587
FILED AUGUST 18, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 15, 2004. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, that the claimant had disability from December 3, 2002, through the date of the CCH, and that the appellant self-insured (referred to as the carrier) has waived the right to contest compensability by not timely contesting the injury in accordance with Section 409.021 (not Section 409.026 as listed in the hearing officer's decision).¹

The carrier appeals, pointing to inconsistencies in the evidence regarding the claimant's injury, and disputing the hearing officer's decision regarding the carrier waiver and disability issues. The claimant responds, urging affirmance.

DECISION

Affirmed as reformed.

The claimant, an assistant store manager, testified that she injured her right hand unloading a truck and stacking some boxes when another box rolled on or fell on her hand. The mechanics and the nature of the injury are disputed. The claimant apparently first saw a doctor on December 3, 2002. That doctor diagnosed a right hand sprain. A Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) in evidence indicates that the carrier received the first written notice "on 12-04-03" (the hearing officer found that the carrier received the written notice on December 4, 2002). The claimant has not worked since December 3, 2002, and the carrier has not paid benefits. The TWCC-21 is dated February 18, 2003, and was filed with the Texas Workers' Compensation Commission on February 19, 2003.

There was conflicting evidence regarding whether, and/or how, the claimant was injured and the nature of the injury. The questions of whether the claimant sustained a compensable injury, whether she had disability, and whether the carrier timely contested compensability presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the carrier. Nothing in our review of the record reveals that the challenged

¹ We note that reference to Section 409.026 is clearly a clerical error. We reform the references to Section 409.026 to be Section 409.021.

determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier appears to argue that it may reopen the issue of compensability on a finding of new evidence that could not reasonably have been discovered earlier. Section 409.021(d). In this case the report that the carrier relies on merely states that the claimant's description of the injury was "overexertion" as opposed to lifting or moving boxes. The reports of the doctors cited by the carrier merely consist of conflicting evidence. In any event, the carrier had failed to pay benefits and had not timely disputed the claim.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm the hearing officer's decision and order as reformed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**NO
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Daniel R. Barry
Appeals Judge